

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MOLDEX-METRIC, INC.,

Plaintiff,

vs.

3M COMPANY and 3M INNOVATIVE
PROPERTIES COMPANY,

Defendants.

Civil No. 14-1821 (JNE/FLN)

**[CORRECTIVE]
DECLARATION OF JAMES E.
HORNSTEIN IN SUPPORT OF
MOLDEX’S MOTION FOR
SUMMARY JUDGMENT ON
3M’S “UNCLEAN HANDS”
AFFIRMATIVE DEFENSE**

I, JAMES E. HORNSTEIN, hereby declare and state as follows:

1. I am of fully legal age and am competent to make the statements contained in this Declaration.

2. I am a resident of Studio City, California, and I am an attorney admitted to practice law in the State of California. I am employed by Moldex-Metric, Inc., the plaintiff in this lawsuit. My current title is Vice-President of Operations and General Counsel. In that role, I serve as the lead attorney for Moldex, and I serve on the senior executive team to conduct the operations of the company. In my role as Vice-President of Operations, I oversee or co-manage many aspects of the company’s operations including production, R&D, retail distribution, medical, HR, IT, and all legal functions.

3. In my declaration in support of Moldex’s motion for summary judgment on 3M’s unclean hands defense, filed April 1, 2016, I detailed the results of my investigation of the NRR and supporting attenuation data displayed on the M-Series Earmuff and

Special Ops Earmuff packaging and promotional materials. Specifically, I wrote in my prior declaration that: “I confirmed during my investigation that the supporting attenuation data and NRRs displayed on the packaging of M-Series Earmuffs and Special Ops Earmuffs is correct and accurately reflects the attenuation results obtained from the NRR labeling test for each Earmuff.” This data remains accurate. However, in my prior declaration I inadvertently failed to note on certain M-Series packaging that the supporting attenuation data was mistakenly transposed, such that the row of “Mean Attenuation” data was labeled as “Standard Deviation” data, and vice versa, as shown on the annotated M2 earmuff packaging below:

M2 earmuff packaging (Ex. 15 to April 1 Hornstein Declaration):

The image shows a table from M2 earmuff packaging with three language headers: OVER-THE-HEAD, PAR-DESSUS-LA-TÊTE, and SOBRE-LA-CABEZA. The table has columns for Frequency (Hz) and NRR, and rows for Standard Deviation (dB) and Mean Attenuation (dB). Blue circles and arrows highlight the transposition error: the Standard Deviation row contains Mean Attenuation data, and the Mean Attenuation row contains Standard Deviation data.

Frequency (Hz) Frecuencia (Hz) Fréquence (Hz)	125	250	500	1000	2000	3150	4000	5300	8000	NRR
Standard Deviation (dB) Desviación Standard (dB) Écart standard (dB)	16.4	23.9	27.8	35.2	37.5	43.9	46.1	44.4	42.7	26
Mean Attenuation (dB) Atenuación de Dato (dB) Atténuation moyenne (dB)	2.8	2.6	2.0	3.5	2.8	3.9	3.6	4.1	4.7	

4. Moldex is in the process of correcting this inadvertent transposition error on the affected M1 and M2 earmuff packaging.

5. I have also confirmed that Moldex’s M3 earmuff packaging and Moldex’s Special Ops earmuff packaging do not contain this transposition error, as shown below:

M3 Packaging (Ex. 16 to April 1 Hornstein Declaration):

Frequency (Hz) Frecuencia (Hz) Fréquence (Hz)	125	250	500	1000	2000	3150	4000	6300	8000	NRR
Mean Attenuation (dB) Atenuación de Dato (dB) Atténuation moyenne (dB)	17.9	22.4	26.1	31.5	35.5	40.2	43.1	40.9	37.6	24
Standard Deviation (dB) Desviación Standard (dB) Écart Standard (dB)	3.4	2.3	2.5	3.2	2.8	3.8	3.8	3.8	4.5	

Special Ops “Camo” M1 packaging (Ex. 17 to April 1 Hornstein Declaration):

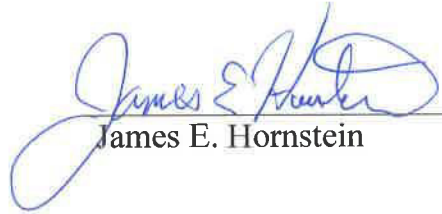
Frequency (Hz) Frecuencia (Hz) Fréquence (Hz)	125	250	500	1000	2000	3150	4000	6300	8000	NRR
Mean Attenuation (dB) Atenuación de Dato (dB) Atténuation moyenne (dB)	19.5	26.9	34.2	40.4	37.7	42.1	42.0	42.0	41.6	29
Standard Deviation (dB) Desviación Standard (dB) Écart Standard (dB)	2.6	2.4	2.8	2.8	3.0	2.8	3.1	2.9	2.8	

Special Ops “Camo” M2 packaging (Ex. 18 to April 1 Hornstein Declaration):

BEHIND-THE-HEAD DETRAS-DE LA-CABEZA DERRIÈRE-LA-TÊTE										
Frequency (Hz) Frecuencia (Hz) Fréquence (Hz)	125	250	500	1000	2000	3150	4000	6300	8000	NRR
Mean Attenuation (dB) Atenuación de Dato (dB) Atténuation moyenne (dB)	15.3	21.6	25.2	33.1	36.1	41.4	41.3	43.5	40.9	24
Standard Deviation (dB) Desviación Standard (dB) Écart Standard (dB)	2.4	2.4	2.2	2.4	3.2	3.8	3.4	3.4	4.3	

I DECLARE, UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: May 6, 2016



James E. Hornstein